HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.331 of 2007

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Between:

M. Venkaiah and six others. …Appellants

And

Mandal Revenue Officer,
Shankarpalli Mandal, Ranga Reddy District
and two others. ….Respondents.

:: J U D G M E N T ::

Counsel for the appellants : Sri G. Arun Kumar

20th April, 2007

Per G.S. SINGHVI, C.J.

Whether the action of the land owner to surrender excess land in terms of the provisions contained in the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, 'the 1973 Act') can be indirectly called in question at the instance of his

heirs, and that too after a gap of 28 years, is the question which arises for determination in this appeal filed against order dated 12-3-2007 passed by the learned Single Judge in Writ Petition No.4921 of 2007.

The appellants claim to have obtained Occupancy Rights Certificates in 1978 in respect of Survey Nos.71, 72 and 73 situated at Chendippa Village, Shankarpalli Mandal, Ranga Reddy District under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the 1955 Act'). After about 28 years, they submitted applications for issue of pattadar passbooks. Revenue Divisional Officer, Chevella Division, Ranga Reddy District (respondent No.2 herein) forwarded their applications to Mandal Revenue Officer, Shankarpalli Mandal (respondent No.1 herein) for taking action for issue of pattadar passbooks subject to the condition that they were in physical possession. Soon thereafter, the appellants filed Writ Petition No.22752 of 2006 for issue of a mandamus to the respondents to issue pattadar passbooks to them. The same was disposed of by the learned Single Judge on 3-11-2006 in the following terms:

> "This writ petition is filed seeking a writ of Mandamus directing respondent No.1 to implement the orders issued by respondent No.2 dated 14-07-1978 granting Occupancy Rights Certificate (ORC) in Form III. It appears that respondent No.2 by letter dated 25-03-2006 requested respondent No.1 to incorporate the names of the petitioners in the revenue records and issue pattadar passbooks (PPBs). As the same was not done, instant writ petition is filed.
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> At the stage of admission itself, after obtaining instructions, the learned Assistant Government Pleader for Revenue (General-T) submits that the names of the petitioners have already been incorporated in the Pahanies and that after physical verification, necessary steps will be taken for issuance of PPBs and title deeds. In view of the submission made by the learned Assistant Government Pleader, writ petition is misconceived.

> The writ petition is accordingly dismissed recording the statement of the learned Assistant Government Pleader. No costs."

After disposal of the writ petition filed by them, the appellants made representation dated 9-11-2006 to respondent No.2 for issue of pattadar passbooks and then filed Writ Petition No.4921 of 2007, which was dismissed by the learned Single Judge on the ground of delay and also on the ground that an effective alternative remedy is available to the writ petitioners (the appellants herein) under Section 20 of the 1973 Act.

Shri G. Arun Kumar argued that notwithstanding the long time gap of almost 28 years between the issue of Occupancy Rights Certificates in favour of the appellants and submission of application by them for issue of pattadar passbooks, the learned Single Judge should not have relegated the appellants to the alternative remedy of appeal because, there can be no legitimate objection to the issue of pattadar passbooks in their favour. He further argued that the surrender made by the land owner could not have been accepted by the competent authority because the former did not have the locus to deprive the legal heirs of their right over the land.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed summarily. Undisputedly, the appellants were granted Occupancy Rights Certificates in 1978 and they filed applications for issue of pattadar passbooks sometime in the year 2005 i.e. after a gap of 27 years. Learned counsel for the appellants could not offer any tangible explanation for this long time gap. Therefore, there is no escape from the conclusion that the appellants are guilty of laches and the learned Single Judge would have been fully justified in non-suiting them only

on the ground of delay. In **State of Madhya Pradesh v. Bhailal Bhai**[1], the Constitution Bench of the Supreme Court considered the issue of delay in filing petitions under Article 226 of the Constitution and laid down the following propositions:

> "1) If there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases if will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.
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> 2) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

The same view was reiterated by another Constitution Bench in **Tilokchand v. H.B. Munshi**[2]. Speaking for the majority of the Court, Hidayathullah, CJ, observed:

> "If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must more the Court at the earliest possible time and explain

satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Art. 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

The proposition laid down in the last mentioned judgment was approved by the majority of nine-judge Bench in **Mafatlal Industries Ltd. v. Union of India**[3]**.**

By applying the ratio of the above mentioned judgments to the facts of this case, we hold that the appellants are guilty of laches and they are liable to be non-suited on that ground alone.

We also agree with the learned Single Judge that the appellants should be relegated to the alternative remedy of appeal. It is neither the pleaded case of the appellants nor Sri Arun Kumar argued that the remedy of appeal available to his clients is not an effective alternative remedy. Therefore, keeping in view the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to him, we decline

to interfere with the order under challenge. In this connection, reference can usefully be made to the judgments of the Supreme Court in **A.V. Venkateshwaran v. R.S. Wadhwani**[4], **Thansingh Nathmal v. Superintendent of Taxes**[5], **Baburam v. Zilla Parishad**[6], **Champa Lal v. I.T. Commissioner**[7], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[8], **C.I.T. v. Ramendra Nath Ghosh**[9], **Swadeshi Cotton Mills Co. Ltd. v. Govt. of U.P.**[10], **Gujarat University v. N.U. Rajguru**[11], **State of H.P. v. Raja Mahendra Pal**[12], **L.L. Sudhakar Reddy v. State of A.P.**[13], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[14], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[15], **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,**[16] **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[17] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[18].

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.635 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

20th April, 2007

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1964 SC 1006

[2] AIR 1970 SC 898

[3] JT 1996 (11) SC 283

[4] AIR 1961 SC 1506

[5] AIR 1964 SC 1419

[6] AIR 1969 SC 556

[7] AIR 1970 SC 645

[8] AIR 1970 SC 1980

[9] (1972) 4 SCC 379

[10] (1975) 4 SCC 378

[11] AIR 1988 SC 66

[12] (1999) 4 SCC 43

[13] (2001) 6 SCC 634

[14] (2002) 1 SCC 216

[15] (2003) 2 SCC 107

[16] (2004) 3 SCC 553

[17] (1983) 2 SCC 433

[18] (1985) 1 SCC 260